IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

APPEAL (L) NO.466 OF 2004
IN
ARBITRATION PETITION NO.374 OF 2003

VFC Securities Pvt. Ltd. ..Appellants

Vs.

Rashesh N. Shah
Shares & Brokers Pvt. Ltd. ..Respondents.

Mr.Nymph Shah, in person for the Appellants.

Mr.H.Semi, Advocate for the Respondents.

CORAM: A.P.SHAH AND
S.J.VAZIFDAR, JJ.

DATED: 2ND FEBRUARY, 2005

ORAL JUDGMENT : (Per S.J.Vazifdar, J.)

This Appeal is filed against the order and judgment of the learned Single Judge dismissing the Appellant's Petition under section 34 of the Arbitration and Conciliation Act, 1996 to set aside an award.

2. The Appeal raises for consideration the scope of the power of the Court under section 34 of the 1996 Act to interfere with the decision of an arbitral tribunal regarding their jurisdiction based on their interpretation of the arbitration agreement. We

have come to the conclusion that this power is limited by the same principles and to the same extent as the power of the Court to interfere with the interpretation of an arbitral tribunal of any other contractual provision.

3. The Respondent was the claimant before the sole Arbitrator in the arbitration proceedings concluded under the Bye-laws, Rules and Regulations of the National Stock Exchange of India Ltd. (NSEIL). The Arbitrator awarded only the principal sum of Rs.3,62,738.08 ps. to be paid by the Appellant to the Respondent. There was no challenge before the learned Single Judge and at the hearing before us regarding the award of this sum.

4. The only contention urged before the learned Single Judge and at the hearing before us was that the Arbitrator erred in refusing to adjudicate the Appellant’s claim for the cost of installation of, a terminal through V-SAT for the Respondent. The Appellants contended that they obtained the permission to do so and paid a sum of Rs.3,27,000/- to the National Stock Exchange (N.S.E.) to install the system at the Respondent’s premises at Ahmedabad against which the Respondent paid the Appellant a

sum of Rs.1,00,000/- and promised to pay the balance amount of Rs.2,35,000/- in due course. The Appellant therefore sought an adjustment of this amount.

5. The learned Arbitrator came to the conclusion that under the arbitration clause only transactions carried out on the NEAT system of the NSE could be considered and, that the Appellant's claim for the installation of the V-SAT did not fall within the ambit thereof. The Arbitrator held as under :

> "The Arbitrator specifically advised the Respondent that the present arbitration matter can only cover transactions carried out on the NEAT system of the NSE and as such the payment made by it at Rs.3,25,000/- for installation of a VSAT cannot be part of its subject matter. The Respondent was advised that its claim for balance amount outstanding for VSAT would have to be taken up and settled by it with the Membership Department of the NSE since it has stated to have already surrendered the same to the NSE."

6. As recorded in the award, the written submissions also contained a claim for the installation of the V-SAT system. The Arbitrator

in paragraph 10 of the award therefore again observed that the rival contentions in that regard were not material in view of what had been held earlier.

7. The effect of the above observations clearly is that the Arbitrator considered the Appellant's claim for the installation of the V-SAT system and held that he had no jurisdiction to decide the same. That this is the effect of the above observations is admitted. It was submitted on behalf of the Appellant that the learned Arbitrator wrongly held that he had no jurisdiction to consider the said claim.

8. It is necessary therefore at this stage to examine the arbitration clause pursuant to which the disputes and differences between the parties were referred to arbitration. Clause 1 pertaining to arbitration reads as under :

> "All claims, differences or disputes between the Trading Members inter se and between Trading Members and Constituents arising out of or in relation to dealings, contracts and transactions made subject to the Bye-Laws, Rules and Regulations of the Exchange or with reference

> to anything incidental thereto or in pursuance thereof or relating to their validity, construction, interpretation, fulfilment of the rights, obligations and liabilities of the parties thereto and including any question of whether such dealings, transactions and contracts have been entered into or not shall be submitted to arbitration in according with the provisions of these Byelaws and Regulations."

9. The learned Single Judge upheld the award on the ground that the Arbitrator could not have adjudicated the Appellant's claim for adjustment while considering the Respondent's claim arising out of settlement of accounts and non-release of the balance confirmed thereunder. The learned Judge considered it unnecessary to go into the question whether the dispute regarding the installation of the V-SAT system is covered by the arbitration clause.

10. We however find it appropriate to consider the matter from another angle. The decision in such cases must depend on the answer to two questions. Was the arbitral tribunal competent to rule on its own jurisdiction ? If the question is answered in the affirmative, the scope or ambit of the power of

the Court to interfere with the decision of the arbitral tribunal then falls for consideration.

11. The learned Arbitrator, as we have already observed, came to the conclusion that the arbitration clause did not confer on him jurisdiction to decide the Appellant's claim for installation of the said system. In doing so, he quite clearly construed the arbitration clause. Mr. Shah however submitted that the clause was wide enough to enable the Appellant's claim being considered. Mr.Sethi argued to the contrary.

12. The answer to the first question in cases falling under the 1996 lies in section 16 thereof which reads as under :

> "**16. Competence of arbitral tribunal to rule on its jurisdiction.**-(1) The arbitral tribunal may rule on its own jurisdiction, including ruling on any objections with respect to the existence or validity of the arbitration agreement, and for that purpose,-
>
> (a) an arbitration clause which forms part of a contract shall be treated as an agreement

independent of the other terms of the contract; and

(b) a decision by the arbitral tribunal that the contract is null and void shall not entail ipso jure the invalidity of arbitration clause.

(2) A plea that the arbitral tribunal does not have jurisdiction shall be raised not later than the submission of the statement of defence; however, a party shall not be precluded from raising such a plea merely because that he has appointed, or participated in the appointment of, an arbitrator.

(3) A plea that the arbitral tribunal is exceeding the scope of its authority shall be raised as soon as the matter alleged to be beyond the scope of its authority is raised during the arbitral proceedings.

(4) The arbitral tribunal may, in either of the cases referred to in sub-section (2) or sub-section (3), admit a later plea if it considers the delay justified.

> (5) The arbitral tribunal shall decide on a plea referred to in sub-section (2) or sub-section (3) and, where the arbitral tribunal takes a decision rejecting the plea, continue with the arbitral proceedings and make an arbitral award.
>
> (6) A party aggrieved by such an arbitral award may make an application for setting aside such an arbitral award in accordance with section 34."

13. The Arbitrator therefore had jurisdiction to decide the question pertaining to his jurisdiction. In fact, he was bound to decide this question. The first question must therefore be answered in the affirmative.

14. The Arbitrator decided the scope of his jurisdiction by construing the arbitration agreement set out above qua the Appellant’s claim for adjustment. He did not ignore the arbitration clause. Having done so, he came to the conclusion that he did not have jurisdiction to adjudicate the claim on merits.

15. We are unable to state that the Arbitrator’s

decision regarding the scope and ambit of the arbitration clause and, accordingly, his jurisdiction is ex-facie wrong and erroneous. The arbitration clause does not belong to the category of clauses which require no interpretation and must simply be applied. It is not a clause in respect whereof two views are not possible. The least that can be said is that the view taken by the learned Arbitrator is a possible view.

16. The next question that arises therefore pertains to the power of the Court to interfere with an award in so far as it relates to the decision on the jurisdiction of the Arbitrator. In our view this power is limited by the same principles and to the same extent as the power of the Court to interfere with the interpretation of an arbitral tribunal of any other contractual provision.

17. It is settled law that the interpretation of the contract is a matter for the Arbitrator and, even assuming that it was not the correct view and that another view is possible, it would not be permissible for the Court to set aside the award on that ground. It would be sufficient in this regard to refer to the judgment of the Supreme Court in

U.P.Hotels v. U.P.State Electricity Board (1989) 1 SCC, 359 where the Supreme Court held as under :

> "17. ..... Even assuming, however, that there was an error of construction of the agreement or even that there was an error of law in arriving at a conclusion, such an error is not an error which is amenable to correction even in a reasoned award under the law. ....."
>
> "27. In the instant case, the view taken by the Umpire on the interpretation of the agreement between the parties in the light of the observations of this Court in *Indian Aluminium Co.* case was at best a possible view to take, if not the correct view. If that was the position then such a view, even if wrong, cannot be corrected by this Court on the basis of long line of decisions of this Court. In the aforesaid view of the matter it is necessary to examine the aforesaid decision in the *Indian Aluminium Co.* case. .... The Umpire was right. In our opinion, the Umpire committed no error in arriving at such conclusion. Furthermore, such a conclusion is certainly a possible view of the interpretation of the decision of this Court in *Indian Aluminium Co.* case, if not the only view. We need go no further than that."

18. In our opinion, the above principles apply

equally to the decision of an arbitral tribunal under section 16 of the 1996 Act, interpreting the arbitration clause for the purpose of determining the extent and ambit of their jurisdiction thereunder. There is nothing in the 1996 Act that suggests the contrary. Section 34 of the 1996 Act applies to awards generally. Section 34 neither expressly nor impliedly excludes from within its scope a challenge to an award in so far as it determines the jurisdiction of the arbitral tribunal in exercise of their powers under section 16 of the Act.

19. It is therefore not open for us to set aside the award even if we were to come to the conclusion that another view is possible viz. that the Appellant's claim for the cost of installation of the V-SAT system is arbitrable on a proper construction of the said arbitration clause. This is for the reason that as already held by us, the Arbitrator's interpretation in this case is certainly a possible one.

20. The Appeal is therefore dismissed. In the circumstances of the case, there shall be no order as to cost.